



FRIENDS OF THE RIVER

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June 14, 2017

Delta Independent Science Board Members **via Email**

Re: URGENT Delta Independent Science Board public review draft, Final EIR/EIS for California WaterFix

Dear Delta Independent Science Board Members:

This follows up some brief comments we made at your teleconference meeting two days ago about your public review draft of your review of the Final EIR/EIS for the California WaterFix Delta Water Tunnels project. **First**, we were surprised that the content and tone of your public review draft is oriented to defending the Final EIR/EIS instead of addressing such serious deficiencies as the complete failure of the EIR/EIS to include any alternatives finally beginning to restore through-Delta flows by reducing exports. The draft actually includes language in the last paragraph (at p. 14) stating:

These comments should not be taken as criticism of those who have assembled the information, carried out the analyses, and prepared the BDCP and WaterFix environmental documents. ***They followed what the laws, regulations, and permitting processes require.*** They faced enormous challenges from such a large and complex system. (Emphasis added).

In fact, there have been numerous comments by respected public interest organizations over the years about significant and profound violations of NEPA and CEQA permeating the project environmental documents. Being neither judges nor lawyers, opining that the environmental documents comply with law is not something that you are qualified to do. Many lawyers have concluded that the environmental documents do not comply with NEPA or CEQA and have so stated in formal comments. That inappropriate conclusion should be deleted from your review.

Second, the last two pages of your review in addition to including the above language, includes a whole section (at pp. 12-14): “Reflections: Paralysis by Analysis, and an Opportunity missed.” This section includes the language (at p. 13) stating:

In our judgment, ***what the Courts now require to be included in an EIS/EIR*** can make them so massive as to be incomprehensible . . . ***Until legislatures amend NEPA and CEQA and set a new course***, we recommend that the agencies prepare a separate document for each project laying out the critical issues for public and scientific review. (Emphasis added).

The new Administration and Congress would no doubt appreciate very much language from independent scientists blaming court decisions enforcing our laws for the length and other problems with some environmental impact statements and reports. In fact, most experienced environmental lawyers and judges who handle these cases would, I believe, explain to you that it is the continuing efforts by some public agencies in some situations to fail to make the environmental full disclosure

required by NEPA and CEQA that leads to decisions determining that certain environmental documents fail to comply with law. Another ongoing problem is refusal by some public agencies in some instances, like the BDCP/WaterFix, to include development of real alternatives to projects out of concern that the public would end up favoring such alternatives over the project that the agency and/or its masters wish to carry out.

This entire section needs to either be deleted or drastically modified, unless it really is your intent to assist efforts to weaken NEPA and CEQA. In the current political climate, the very last thing we need is “amendments” of NEPA and CEQA.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Robert Wright". The signature is written in a cursive, flowing style.

E. Robert Wright
Senior Counsel
Friends of the River